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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ROBERT COHEN, individually and
on behalf of all others similarly
situated,

Plaintiff,

vs.

SPROUTS FARMERS MARKET,
INC., and DOES 1-10 Inclusive,
Defendants.

Case No.: 8:22-cv-01837-DOC

**NOTICE OF MOTION AND
MOTION TO POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO REMAND**

Hon. David O. Carter

Date: December 5, 2022

Time: 8:30 a.m.

Place: Courtroom 10A

411 W. Fourth St.

Santa Ana, CA 92701-4516

**TO THE HONORABLE COURT, ALL PARTIES AND THEIR
COUNSEL OF RECORD:**

Please take notice that on December 5, 2022, at 8:30 a.m., before the Honorable David O. Carter in Courtroom 10A of the United States District Court for the Central District of California, located at 411 West Fourth Street, Santa Ana, CA 92701-4516, Plaintiff Robert Cohen (“Plaintiff”) will and hereby does move for an order remanding this case back to the Superior Court of the State of California for County of Orange pursuant to 28 U.S.C. § 1447. The basis of this Motion is that the Ninth Circuit has made it abundantly clear that plaintiffs with claims under the Fair and Accurate Credit Transactions Act (“FACTA”), 15 U.S.C. § 1681 et. seq., do not have standing to pursue such claims in federal court. *See, e.g., Noble v. Nev. Check Cab. Corp.*, 726 Fed. Appx. 582, 584 (9th Cir. 2018) (Plaintiff in FACTA actions have no Article III standing); *Bassett v. ABM Parking Services, Inc.*, 883 F.3d 776 (9th Cir. 2018) (same); *Daniel v. Nat’l Park Serv.*, 891 F.3d 762, 766 (9th Cir. 2018) (same). For these reasons, and as more fully explained in Plaintiffs’ Memorandum in Support, concurrently filed herewith, Plaintiff’s Motion to Remand should be granted.

Plaintiff’s Motion consists of the instant Notice, the enclosed memorandum of points and authorities, the records on file in this case, and all other evidence or oral argument the Honorable Court may hear.

Pursuant to Local Rule 7-3, the parties met and conferred regarding the substance of this motion on October 20, 2022. Defendant was unwilling to stipulate to a remand.

Dated: October 27, 2022

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: s/Thomas E. Wheeler
Attorney for Plaintiff

Memorandum of Points and Authorities

I. Introduction

This case arises out of Defendant Sprouts Farmers Market, Inc.’s (“Defendant”) printing of both the initial six and last four digits of Plaintiff Robert Cohen’s (“Plaintiff”) credit and debit cards on its receipts when Plaintiff made purchases from Defendant. Complaint (“Complaint”) at ¶¶ 8-9. The first six digits of a card consist of the Issuer Identification Number (“IIN”), which identifies the financial institution issuing the card.¹ Such conduct is a black letter violation of FACTA, which specifically provides that “no person that accepts credit cards or debit cards for the transaction of business shall print more than the last five digits of the card number or the expiration date upon any receipt provided to the card holder at the point or transaction of sale. (15 U.S.C. § 1681c(g)(1).)” *Id.* at ¶ 10. However, FACTA claims are not welcome in federal Court in the Ninth Circuit because the printing of these receipts does not create a real risk of identity theft sufficient to constitute an injury in fact to Plaintiff and thus it must be remanded.

Defendant, as the removing parties, bear the burden of demonstrating that Plaintiff has Article III standing. *See Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir 1987). However, it cannot meet this burden because there is no standing for FACTA claims in the Ninth Circuit. *See Noble v. Nev. Check Cab. Corp.*, 726 Fed. Appx. 582, 584 (9th Cir. 2018) (Plaintiff in FACTA actions have no Article III standing); *Bassett v. ABM Parking Services, Inc.*, 883 F.3d 776 (9th Cir. 2018) (same); *Daniel v. Nat’l Park Serv.*, 891 F.3d 762, 766 (9th

¹ *See, e.g.*, “Credit Card Numbers: What Do They Mean?”, Forbes Advisor (October 18, 2022), available at <https://www.forbes.com/advisor/credit-cards/what-does-your-credit-card-number-mean/#:~:text=The%20first%20six%20digits%20of,financial%20institution%20issuing%20the%20card.>

1 Cir. 2018) (same). Because Defendant cannot prove Article III standing to justify
 2 federal jurisdiction, remand is required.

3 **II. Legal Standards**

4 Defendant, as the removing party, bears the burden of establishing standing
 5 under Article III. *See Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 561 (1992). The
 6 removal statutes are strictly construed in favor of remand. *Takeda v.*
 7 *Northwestern National Life Ins. Co.*, 765 F.2d 815, 818 (9th Cir. 1985). This
 8 narrow construction in favor of remand protects the jurisdiction of state courts.
 9 *Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689, 698 (9th Cir. 2005). “Federal
 10 jurisdiction must be rejected if there is any doubt as to the right of removal in the
 11 first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Where
 12 there is a failure of federal subject matter jurisdiction, state courts may adjudicate
 13 such claims because they are not bound by the standing constraints of Article III.
 14 *Polo v. Innoventions International, LLC*, 833 F.3d 1193, 1195 (9th Cir. 2016).

15 **III. Legal Argument**

16 There is no Article III standing for FACTA claims where a defendant
 17 includes the IIN numbers in the Ninth Circuit such that Defendant can never
 18 satisfy its burden of proving such standing and this Court must remand for lack of
 19 subject matter jurisdiction. In *Bassett v. ABM Parking Services, Inc.*, 883 F.3d
 20 776, 783 (9th Cir. 2018), the Court found that a bare procedural violation of
 21 FACTA does not convey standing because there is no risk of identity theft from
 22 the publication of an expiration date and that “theory of ‘exposure’ to identity
 23 theft is therefore ‘too speculative for Article III purposes.’”

24 Directly on point, in *Noble v. Nev. Check Cab. Corp.*, 726 Fed. Appx. 582,
 25 584 (9th Cir. 2018) and relying on *Bassett*, the Court reversed the district court’s
 26 order on the motion to dismiss finding that there was no standing where “the first
 27 digit[s] of a credit card number merely identifies the brand of the card, and
 28 Congress has not prohibited printing the identity of the credit card issuer along

1 with the last five digits of the credit card number.” This is exactly the issue
 2 alleged by Plaintiff here where Defendant published the first six digits consisting
 3 of the IIN in addition to the last four on its receipts. This is also not a defect that
 4 could even be “waived.” In *Marshall v. Motel 6 Operating LP*, 825 F. App'x 527,
 5 528 (9th Cir. 2020), the Court of Appeals *sua sponte* dismissed a case identical to
 6 this where the defendant had printed the IIN digits without either party even
 7 briefing or arguing the issue. Thus, there can be no standing under binding Ninth
 8 Circuit precedent and this case must be remanded.

9 An overwhelming number of courts in this district alone have come to the
 10 same conclusion. *Kamel v. Hibbett, Inc.*, No. 8:22-CV-01096-RGK-E, 2022 WL
 11 2905446, at *2 (C.D. Cal. July 22, 2022); *Colin v. Alpargatas USA, Inc.*, CV 21-
 12 9394-GW-Ex, 2022 WL 557179, at *12 (C.D. Cal. February 4, 2022) (FACTA
 13 lawsuit remanded to state court when circuit court did not possess subject matter
 14 jurisdiction due to Plaintiff’s lack of Article III standing); *Peskett v. Designer*
 15 *Brands, Inc.*, Case No. 2:20-cv-00563-FMO-AFM, 2020 WL 2519887, at *2
 16 (C.D. Cal. May 18, 2020) (same); *Keim v. Trader Joe’s Co.*, Case No. CV 19-
 17 10156 PSG, 2020 WL 564120, *8 (C.D. Cal. Feb. 5, 2020) (same); *Garcia v.*
 18 *Kahala Brands, Ltd.*, Case No. CV 19-10062-GW-JEMx, 2020 WL 265518, *3
 19 (C.D. Cal. Jan. 16, 2020) (same); *Mendoza v. Pac. Theatres Entm’t Corp.*, Case
 20 No. CV1909175CJCJCX, 2019 WL 6726088, *3 (C.D. Cal. Dec. 10, 2019)
 21 (same); *Alvarado v. Univ. of Southern California*, Case No. CV 17-3671-
 22 GW(AJWx), 2017 WL 8116092, at *4 (C.D. Cal. Sept. 21, 2017) (same). There
 23 is no reason for this Court to diverge from this clear result. Accordingly, this
 24 matter must be remanded.

25 **IV. Conclusion**

26 Defendant has failed to carry its burden to show Plaintiff has Article III
 27 standing and this action must be remanded to the Superior Court for the County
 28 of Orange where it was originally filed.

1
2 Dated: October 27, 2022

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

3 s/ Thomas E. Wheeler

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1 Filed electronically on this 27th Day of October, 2022, with:
2 United States District Court CM/ECF system.

3 Notification sent electronically on this 27th Day of October, 2022, to:

4 Hon. David O. Carter
5 United States District Court
6 Central District of California
7 And All Counsel of Record as Recorded On The Electronic Service List
8
9

10 s/ Thomas E. Wheeler, Esq.
11 THOMAS E. WHEELER
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